

## First Amendment to Wastewater Service Agreement

This **First Amendment to Wastewater Service Agreement** is made and entered into this \_\_\_\_ day of September~~October~~, 2020, by and between the **CITY OF BILLINGS, MONTANA** (City), a Montana Municipal Corporation whose principal business address is 210 North 27<sup>th</sup> Street, P.O. Box 1178, Billings, Montana 59103, and the **LOCKWOOD WATER AND SEWER DISTRICT** (District), whose principal business address is 1644 Old Hardin Road, Lockwood, Montana 59101.

### RECITALS

1. The City and District entered into a **Wastewater Service Agreement** on March 24, 2008, hereinafter the "**Agreement**". The **Agreement** sets forth terms of the disposal of the District's wastewater to the City for treatment by the City.
2. Pursuant to the **Agreement**, the District requested to expand its service area to include the Lockwood Targeted Economic Development District (TEDD) study area. In exchange for allowing this expansion of service, the City requires additional amendments to the **Agreement**. The District's service area is described on Exhibit "A". The proposed expansion area (the TEDD tract) is described on Exhibit "B".
3. The TEDD (Targeted Economic Development District) is a statutorily authorized tax increment finance district created to help fund a "turn-key" facility for industry to locate and expand in Yellowstone County. The TEDD is located outside of the City limits and appurtenant to the District's service area.
4. The TEDD is expected to develop over a number of years. Accordingly, at this time neither the City nor the District can predict the volume or types of wastewater that will be generated from the TEDD. The District recognizes that this unknown factor creates additional ongoing risk for the City, particularly since the District is a non-owner customer of the City. The District agrees to pay the City an 18% surcharge on all wastewater services provided to the TEDD through the District because of this additional risk and because of the significant benefit to Lockwood and the TEDD.
5. The District acknowledges and agrees that the cost of wastewater service from the City has been freely negotiated between the Parties. The City has no obligation to provide wastewater services to the District and to the TEDD. The District is a non-owner customer. The District agrees that the terms of this Agreement are fair and equitable and that the contract rate for the cost of service, including the surcharges, is reasonable and just. The District acknowledges that the City is agreeing to provide wastewater services to the District and to the TEDD at a cost that is significantly less than any other option available to the District and the TEDD. The District agrees that City wastewater service is the best, most feasible, and cheapest option available for the TEDD.

6. Yellowstone County, in conjunction with the Big Sky Economic Development Association (BSEDA), seek to enhance and expand economic activities through the development of a planned, ready-to-go industrial space that supports secondary, value adding industries. Accordingly, Yellowstone County and BSEDA developed the Lockwood Targeted Economic Development District Comprehensive Development Plan. In order to develop and be successful, the TEDD needs critical services such as wastewater treatment services. The TEDD is not located within the limits of the City of Billings. The City desires and intends to cooperate with Yellowstone County and BSEDA to facility the success of the TEDD for the benefit of both the City and Yellowstone County. The District has asked the City to allow the District to expand its Service Area under the Agreement to include the TEDD. The City would then provide wastewater services to the TEDD through the Agreement between the City and the District. The City shall allow the District to expand its Service Area to include the TEDD Tract, contingent upon the City and Yellowstone County first entering into a Property Tax Revenue Sharing Agreement pursuant to which the City and Yellowstone County will share the future property tax revenue generated from the taxable value of property in the TEDD, upon the termination or expiration of the TEDD.

**NOW THEREFORE**, the City and the District agree to amend the **Agreement** as provide herein.

**AGREEMENT:**

1. The City and the District agree that the Recitals stated above are true and accurate and are incorporated into this Agreement.
2. The City and the District agree that the **Agreement** shall be amended as follows:
  - A. **Section 2 Service Area** on page two of the **Agreement** shall be deleted and replaced with the following paragraph:

**Service Area:** The City shall accept for treatment wastes that are contributed from the District's users whose properties are situated entirely within the boundaries of the original District delineated on attached Exhibit A and within the boundaries of the TEDD study area delineated on attached Exhibit B, subject to the flow and loading limitations in Section 4 herein. Said areas will be hereinafter referred to as "Service Area." It is further understood between the parties hereto that the District shall not expand its Service Area to include any additional properties without first obtaining the City's written approval and that the City may withhold its consent, with or without cause, in the City's sole and exclusive discretion. The District's failure to obtain the City's prior written consent shall subject the District to the fixed sum payment outlined in Section 28 herein.

- B. The first paragraph of **Section 4 Reserve Capacity** on pages two and three of the **Agreement** shall be deleted and replaced with the following paragraphs:

The amount of capacity that the City will reserve in the municipal wastewater system for the sole benefit and use of the District shall be 80% of the following flows and loadings:

- Average daily wastewater flow of 0.91 Million Gallons per Day (MGD); and
- Maximum daily wastewater flow of 2.74 MGD; and
- Average Biochemical Oxygen Demand (BOD) loading of 1,915 pounds per day; and
- Average Total Suspended Solids (TSS) loading will be 2,006 pounds per day.

The reserve capacity is subject to negotiations up to 100% of the flows and loadings identified above. Approximately six (6) months prior to the time that flows or loadings are expected to equal 80% of the flows and/or loadings identified above, the amount of reserve capacity, not to exceed 100% of the values identified above, shall be renegotiated and rates shall be recalculated in accordance with the applicable provisions of the Agreement. If flows or loads exceed the limits specified in this section, the City shall notify the District of such noncompliance. If the District does not restrict the flows or loads exceeding the limits within five (5) days of such notification, the fixed sum payment outlined in Section 28 herein shall apply.

- C. **Section 19 Billing** on pages eight and nine of the **Agreement** shall be deleted and replaced with the following paragraphs:

The District agrees to pay monthly all wholesale user established rates, charges, and fees of the City for the treatment and disposal of the District's wastewater. Payments are due and payable in full no later than thirty (30) days from the date of billing. Payments not received within thirty (30) days shall become delinquent and subject to the late-payment interest charge stated in the City's adopted schedule of wastewater rates and fees.

In addition, a uniform wholesale user surcharge of six (6) percent will be assessed on the equitable bases of prevention of water supply pollution and the City's assumption of the inherent financial risk and liability of providing these services to the District. The six (6) percent surcharge will be applied to all monthly charges for the treatment and disposal of the District's wastewater from the properties that are situated entirely within the boundaries of the original District delineated on Exhibit A. The properties that are situated within the boundaries of the TEDD are shown in Exhibit B. A uniform wholesale user surcharge of eighteen (18%) percent will be assessed on the equitable bases of prevention of water supply pollution and the City's assumption of the inherent additional financial risk and liability of providing these services to the

TEDD. The eighteen (18%) percent surcharge will be applied to all monthly charges for the treatment and disposal of wastewater from the properties that are situated entirely within the boundaries of the TEDD, delineated on Exhibit B. The uniform user surcharge on monthly charges for the TEDD shall begin upon the first connection in the TEDD area to the District's wastewater system and will apply to both the volumetric rate based on wastewater flows and the TEDD area's proportionate share of the fixed monthly fee based on the TEDD area's flows and loadings.

The surcharge shall not apply to system development fees. In addition to the remedies outlined in this section, the District shall be subject to the fixed sum payment provisions in Section 28 herein.

D. ~~The following Section 35 Water is added to the Agreement as follows:~~

~~The City's agreement to allow the District to expand its service area is expressly contingent upon the owners of the TEDD tract and the District agreeing that if the TEDD tract and or the District is ever served by City water from the City of Billings or from another supplier whose source of water originates from the City of Billings then the City may annex the TEDD tract into the City of Billings. Accordingly, contemporaneously herewith, the District shall provide to the City a fully executed and recordable Waiver of the Right to Protest Annexation and Consent to Annexation for the TEDD tract, substantially in the form attached hereto as Exhibit C. The District and the City agree that the Consent to Annexation and Waiver of the Right to Protest Annexation will be effective only if the TEDD and or the District is serviced by City water, from the City or from another supplier whose source of water originates from the City of Billings.~~

~~If the TEDD and or the District is someday serviced by City water from the City or another supplier whose source of water originates from the City of Billings and the City is prevented or precluded from annexing the TEDD tract, then the City may, upon three (3) years written notice to the District, terminate this Amendment and the provision of wastewater services to the TEDD tract, as shown on Exhibit "B". Such termination, however, shall not terminate the City's provision of wastewater services to the original service area identified as Exhibit "A".~~

~~The District covenants and agrees that in the event that the TEDD tract and or the District is ever served by City water from the City or another supplier whose source of water originates from the City of Billings that the District shall not oppose annexation of the TEDD tract and shall take no action that is inconsistent with annexation of the TEDD tract into the City of Billings.~~

E. ~~Section 24 Term of Agreement shall be deleted and replaced as follows:~~

~~24. Term of Agreement: The first term of this Agreement is fifteen (15) years. This Agreement is renegotiable at any time if both parties so consent in writing.~~

~~Either party may terminate this Agreement, without cause, by giving the other party eight (8) years written notice. Provided, however, that the City may terminate this Agreement, with or without cause, upon three (3) years written notice if the District purchases water from a source other than the City, without the City's prior written consent, which consent the City may withhold in its sole and exclusive discretion, with or without cause, pursuant to Paragraph 35 of this Agreement.~~

~~Upon expiration of the first fifteen (15) year term, this Agreement will automatically renew for four (4) additional ten (10) year terms unless terminated by either party by giving eight (8) years written notice or unless the terms are modified by mutual agreement of the parties.~~

**F.D. Section 29 Performance or Financial Guarantee Bond.** The first sentence shall be deleted and replaced with the following:

The DISTRICT shall provide an annually renewable Performance or Financial Guarantee Bond in the name of the CITY in the amount of \$500,00.00 (Five Hundred Thousand Dollars) for the faithful performance of all obligations under this Agreement and shall remain in force at all times throughout the term of this Agreement.

The current, original Agreement remains in full force and effect, except as expressly amended hereby. In the event of any conflict between the Agreement and the terms of the First Amendment to the Wastewater Service Agreement, then the terms of the First Amendment to the Wastewater Service Agreement shall govern.

IN WITNESS WHEREOF, on this \_\_\_\_\_ day of SeptemberOctober, 2020, each of the parties has executed this First Amendment to the Wastewater Service Agreement to be incorporated as part of the Agreement dated March 24, 2008.

DISTRICT:

LOCKWOOD WATER AND SEWER  
DISTRICT

By: \_\_\_\_\_  
President

Attest

\_\_\_\_\_  
Secretary

CITY:

CITY OF BILLINGS, a Montana  
Municipal Corporation

By: \_\_\_\_\_

WILLIAM A. COLE, MAYOR

Attest:

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Denise R. Bohlman, City Clerk

4827-3257-5947, v. 4

Draft of 9/29/2020